

Message Text

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ACTION DLOS-09

INFO OCT-01 EUR-12 IO-14 ISO-00 ACDA-12 AGRE-00 AID-05
CEA-01 CEQ-01 CG-00 CIAE-00 COME-00 DODE-00
DOTE-00 EB-08 EPA-04 SOE-02 DOE-15 FMC-02 TRSE-00
H-02 INR-10 INT-05 JUSE-00 L-03 NSAE-00 NSC-05
NSF-02 OES-07 OMB-01 PA-02 PM-05 SP-02 SS-15
ICA-20 /165 W

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P 282238Z MAR 78

FM AMEMBASSY OTTAWA

TO SECSTATE WASHDC PRIORITY 7237

USMISSION GENEVA PRIORITY

UNCLAS SECTION 01 OF 03 OTTAWA 02213

GENEVA FOR LOS DELEGATION

E.O. 11652: N/A

TAGS: PLOS, CA

SUBJECT: COMMENTS BY CANADIAN OFFICIAL ON LOS CONFERENCE

1. FOLLOWING IS TEXT OF STATEMENT MADE BY ERIK WANG
(DIRECTOR, LEGAL OPERATIONS DIVISION, DEPARTMENT OF
EXTERNAL AFFAIRS) BEFORE STANDING COMMITTEE ON EXTERNAL
AFFAIRS AND NATIONAL DEFENSE, HOUSE OF COMMONS, OTTAWA,
APRIL 27:

"I HAVE BEEN ASKED BY THE CHAIRMAN TO MAKE A PROGRESS
REPORT ON THE LAW OF THE SEA CONFERENCE WHICH IS CURRENTLY
IN SESSION IN GENEVA. SOME OBSERVERS WOULD ARGUE THAT
WHAT IS REALLY NEEDED IS A LACK OF PROGRESS REPORT. IT
IS TRUE THAT AFTER FIVE YEARS OF INTENSIVE EFFORTS,
INCLUDING A TOTAL OF 44 WEEKS OF FORMAL CONFERENCE
MEETINGS, A NUMBER OF DELEGATES TO THE CONFERENCE HAVE
EXPRESSED PRIVATE AND EVEN PUBLIC MISGIVINGS ABOUT THE
PROSPECT FOR A SUCCESSFUL OUTCOME. TAKING INTO ACCOUNT
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THE WORK OF THE PREPARATORY COMMITTEES WHICH MET BEFORE
THE CONFERENCE WAS FORMALLY INAUGURATED IN 1973, ONE CAN
LOOK UPON 1978 AS THE TENTH ANNIVERSARY OF CURRENT EFFORTS
TO DEVELOP A COMPREHENSIVE NEW LEGAL REGIME FOR THE
OCEANS. A SENSE OF IMPATIENCE AND FRUSTRATION OVER THIS
PROTRACTED PROCESS HAS BEEN HEIGHTENED BY THE PROCEDURAL
SKIRMISHING WHICH HAS TAKEN UP THE FIRST THREE WEEKS OF

THE PRESENT EIGHT-WEEK SESSION OF THE CONFERENCE.

"THE CURRENT (7TH) SESSION OF THE CONFERENCE HAS ONLY THREE WEEKS REMAINING TO IT. THE OUTCOME IS FAR FROM CLEAR. A NUMBER OF IMPORTANT ISSUES REMAIN TO BE RESOLVED INCLUDING ISSUES SUCH AS DEEP SEABED MINING WHICH HAVE CREATED DEEP DIVISIONS WITHIN THE CONFERENCE. IN FACT THE CONFERENCE HAS NOW IDENTIFIED SEVEN SO-CALLED "HARD-CORE" ISSUES ON WHICH IT IS AGREED PRIORITY

ATTENTION SHOULD BE DEVOTED DURING THE TIME REMAINING AT THE CURRENT SESSION. THESE ARE ISSUES ON WHICH THE SUCCESS OR FAILURE OF THE CONFERENCE MAY DEPEND. THEY ARE: (1) THE SYSTEM OF EXPLORATION AND EXPLOITATION, AND RESOURCE POLICY, FOR DEEP SEABED MINING BEYOND THE LIMITS OF NATIONAL JURISDICTION; (2) FINANCIAL ARRANGEMENTS; (3) ORGANS OF THE INTERNATIONAL SEABED AUTHORITY, THEIR COMPOSITION, POWERS AND FUNCTIONS; (4) RIGHT OF ACCESS OF THE LAND-LOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES TO LIVING RESOURCES OF THE EXCLUSIVE ECONOMIC ZONE; (5) QUESTION OF SETTLEMENT OF DISPUTES RE EXERCISE OF SOVEREIGN RIGHTS OF COASTAL STATES IN THE EEZ; (6) DEFINITION OF THE OUTER LIMITS OF THE CONTINENTAL SHELF AND THE QUESTION OF REVENUE SHARING; (7) DELIMITATION OF MARITIME BOUNDARIES BETWEEN ADJACENT AND OPPOSITE STATES
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AND SETTLEMENT OF DISPUTES THEREON.

"IN ADDITION TO THESE "HARD-CORE" ISSUES A NUMBER OF OTHER PROBLEM AREAS OR DEFICIENCIES IN THE NEGOTIATING TEXT HAVE BEEN IDENTIFIED BY DELEGATIONS. IT IS CLEAR THAT ANOTHER SESSION WILL BE REQUIRED TO DEAL WITH SUBSTANTIVE ISSUES, EITHER LATER THIS YEAR OR NEXT YEAR. IN THE MEANTIME THERE IS VERY REAL UNCERTAINTY AS TO WHETHER IMPATIENT GOVERNMENTS WILL PERSIST IN THEIR EFFORTS TO SEEK GLOBAL SOLUTIONS TO THE ISSUES UNDER NEGOTIATION. SOME ARE ALREADY CONSIDERING ALTERNATIVE COURSES OF ACTION, INCLUDING UNILATERAL ACTION. A PROCESS OF "CREEPING JURISDICTION" OR CLAIMS OF COASTAL STATES PROGRESSIVELY EXTENDED TO SEAWARD COULD BECOME IN EFFECT "GALLOPING JURISDICTION" WITHOUT THE BALANCE AND RESTRAINT OF A NEGOTIATED INTERNATIONAL REGIME. FRICTION AND CONTROVERSY COULD, IT IS FEARED, GROW OUT OF COMPETING CLAIMS.

"THIS IS THE BAD NEWS. IT IS IMPORTANT, HOWEVER, TO KEEP IN PERSPECTIVE THE GOOD NEWS - THE SIGNIFICANT PROGRESS WHICH THE CONFERENCE HAS ALREADY MADE IN

RESTRUCTURING BASIC PRINCIPLES OF THE LAW OF THE SEA
AND IN DEVELOPING NEW CONCEPTS OF OCEAN MANAGEMENT.
IN TERMS OF THE RANGE OF ISSUES UNDER NEGOTIATION AND
THE COMPLEXITY AND IMPORTANCE OF THOSE ISSUES, THE
THIRD LAW OF THE SEA CONFERENCE HAS BEEN DESCRIBED AS
ONE OF THE MOST AMBITIOUS CONFERENCES EVER CONVENED UNDER
UN AUSPICES. SOME OBSERVORS HAVE COMMENTED THAT IT IS
NOT REALLY A CONFERENCE IN THE TRADITIONAL SENSE BUT
RATHER A LAW REFORM MOVEMENT, WHICH HAS ALREADY HAD A
PROFOUND IMPACT ON STATE PRACTICE AND ON THE CUSTOMARY
LAW-MAKING PROCESS. FOR EXAMPLE, THE 12-MILE TERRITORIAL

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INFO OCT-01 EUR-12 ISO-00 ACDA-12 AGRE-00 AID-05
CEA-01 CEQ-01 CG-00 CIAE-00 COME-00 DODE-00
DOTE-00 EB-08 EPA-04 SOE-02 DOE-15 FMC-02 TRSE-00
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FM AMEMBASSY OTTAWA
TO SECSTATE WASHDC PRIORITY 7238
USMISSION GENEVA PRIORITY

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SEA LIMIT IS NOW A FACT OF LIFE/ALONG WITH AN ACCEPTABLE
REGIME FOR INTERNATIONAL STRAITS, AND BY THE LATEST
COUNT OVER 50 COUNTRIES HAVE ADOPTED A 200-MILE ZONE FOR
PURPOSES OF FISHERIES JURISDICTION. THE CONFERENCE
PROCESS, AND THE PRESSURE-COOKER EFFECT OF INTENSIVE
INTERNATIONAL NEGOTIATION, HAVE CONTRIBUTED TO A
REMARKABLE TRANSFORMATION OF TRADITIONAL AND OUTMODED
RULES OF INTERNATIONAL LAW. THE TREND TOWARDS FUNCTIONAL
COASTAL STATE JURISDICTION OVER THE MANAGEMENT OF MARINE
RESOURCES IS IRREVERSIBLE, REGARDLESS OF THE OUTCOME OF
THE CONFERENCE. CANADIANS HAVE EVERY REASON TO BE
CONSCIOUS OF THE ORDERLY NATURE OF THIS TRANSFORMATION.
WHEN WE ACTED TO EXTEND OUR FISHERIES JURISDICTION TO
200 MILES LAST YEAR, WE ACTED WITH THE CONCURRENCE OF
OTHER STATES PRINCIPALLY AFFECTED, ON THE BASIS OF LEGAL
CONCEPTS DEVELOPED WITHIN THE LOS CONFERENCE IN ORDER

TO CONSERVE FISHERIES RESOURCES WHICH WERE BEING DEPLETED
AT AN ALARMING RATE.

"THE SESSION AT GENEVA HAS NOW SETTLED INTO AN INTENSIVE
ROUND OF NEGOTIATIONS ON THE UNRESOLVED ISSUES.

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ACCORDING TO LATEST REPORTS, THERE ARE ENCOURAGING SIGNS
OF WILLINGNESS ON THE PART OF DELEGATIONS TO MAKE UP
FOR LOST TIME DURING THE EARLIER WEEKS. A GOOD DEAL
OF THE WORK OF THE CONFERENCE IS TAKING PLACE WITHIN
INFORMAL NEGOTIATING GROUPS MEETING CONCURRENTLY ON A
RANGE OF ISSUES. THE AIM IS TO DEVELOP REVISED ARTICLES
IN RESPECT OF THE UNRESOLVED ISSUES WHICH COULD COMMAND
THE BROADEST POSSIBLE SUPPORT WITHIN THE CONFERENCE AND
WHICH COULD BE INCORPORATED IN A FURTHER REVISION OF THE
NEGOTIATING TEXT. THE "INFORMAL COMPOSITE NEGOTIATING
TEXT" (ICNT) WHICH EMERGED FROM THE LAST SESSION OF THE
CONFERENCE IN NEW YORK LAST JULY NOT ONLY HAS THE
APPEARANCE OF A DRAFT TREATY, IT IS NOW BEING TREATED
WITHIN THE CONFERENCE AS IF IT IS A DRAFT TREATY. FOR
EXAMPLE, A DECISION WAS TAKEN BY THE CONFERENCE EARLIER
THIS WEEK TO REFER THE ICNT TO THE DRAFTING COMMITTEE
CHAired BY AMBASSADOR BEESLEY OF CANADA FOR DETAILED
LEGAL POLISHING OF THOSE PROVISIONS WHICH ARE ALREADY
ACCEPTED AND WHICH CAUSE NO PROBLEMS.

"THE MOST CONTENTIOUS ISSUE BEFORE THE CONFERENCE IS ONE
OF MAJOR IMPORTANCE TO CANADA. THIS IS THE ISSUE OF A
REGIME FOR DEEP SEABED MINING, WHERE THE DIVISIONS HAVE
TENDED TO FORM LARGELY ALTHOUGH NOT EXCLUSIVELY ALONG
NORTH/SOUTH OR DEVELOPED/DEVELOPING LINES. THE ISSUE
HERE IS THAT OF THE TERMS AND CONDITIONS OF ACCESS TO
THE MINERAL RESOURCES OF THE DEEP SEABED, TAKING INTO
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ACCOUNT THE DECISION OF THE UN GENERAL ASSEMBLY THAT
THESE RESOURCES MUST BE CONSIDERED "THE COMMON HERITAGE
OF MANKIND". THE ICNT ALREADY GOES SOME WAY TOWARDS
SETTING OUT AN INTERNATIONAL FRAMEWORK FOR DEEP SEABED
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MINING, AND NEGOTIATING GROUPS ARE NOW FOCUSsing ON
DETAILS OF THE SYSTEM OF EXPLOITATION, ON FINANCIAL
MATTERS SUCH AS THE REVENUE-GATHERING POWERS OF THE
PROPOSED INTERNATIONAL SEABED AUTHORITY AND ON THE

STRUCTURE AND POWERS OF THE AUTHORITY. ONE ASPECT OF IMPORTANCE TO CANADA, AMONGST OTHERS, IS A PROVISION IN THE ICNT PROVIDING FOR A NICKEL PRODUCERS FROM POTENTIALLY DISRUPTIVE EFFECTS ON THE WORLD MARKET. THE CONCERNS OF CANADA, AS THE WORLD'S LARGEST NICKEL PRODUCER, ARE SHARED BY A NUMBER OF OTHER COUNTRIES AND WE ARE HOPEFUL THAT WORKABLE INCENTIVES AND SAFEGUARDS CAN BE AGREED UPON. WITHIN CANADA, THESE CONCERNS HAVE BEEN HEIGHTENED BY THE CURRENTLY DEPRESSED WORLD NICKEL MARKET AND THE RESULTANT LAYOFFS AT SUDBURY.

"ANOTHER ISSUE OF SPECIAL INTEREST TO CANADA IS MARINE POLLUTION. CANADA HAS EXPRESSED CONCERN THAT IN SOME RESPECTS THE FORMULATIONS TO BE FOUND IN THE ICNT FALL SHORT OF AN ADEQUATE REGIME FOR THE PREVENTION OF MARINE POLLUTION. CERTAIN ARTICLES REPRESENT, IN OUR VIEW, A SIGNIFICANT EROSION OF SOVEREIGN RIGHTS WHICH COASTAL STATES HAVE TRADITIONALLY EXERCISED WITHIN THEIR TERRITORIAL SEA UNDER EXISTING INTERNATIONAL LAW. THE RECENT AMOCO CADIZ OIL SPILL OFF THE COAST OF BRITTANY HAS SERVED TO UNDERLINE INTERNATIONAL CONCERN ABOUT THIS ISSUE AND HAS LED A NUMBER OF DELEGATIONS TO REASSESS THEIR POSITIONS. WE HOPE THAT CURRENT NEGOTIATIONS WILL RESULT IN IMPROVEMENTS IN THE TEXT, SO AS TO STRENGTHEN COASTAL STATE RIGHTS TO TAKE NECESSARY MEASURES FOR POLLUTION CONTROL WITHIN THE 12-MILE TERRITORIAL SEA AND WITHIN THE 200-MILE ECONOMIC ZONE.

"ON THESE ISSUES AND ON EACH OF THE OTHER UNRESOLVED ISSUES, ONE CAN DISCERN THE OUTLINE OF AN ACCOMMODATION OF INTERESTS WITHIN AN OVERALL TREATY "PACKAGE". NO

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TO SECSTATE WASHDC PRIORITY 7239

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SINGLE STATE WILL ACHIEVE ALL THE OBJECTIVES WHICH IT
SET FOR ITSELF AT THE OUTSET OF THE NEGOTIATIONS. WE ARE,
HOWEVER, CONVINCED THAT A SUCCESSFUL OUTCOME IS WITHIN
THE GRASP OF THE INTERNATIONAL COMMUNITY, AN OUTCOME
WHICH EMBODIES A RECONCILIATION OF DIVERGENT AND SOME-
TIMES CONFLICTING INTERESTS OF STATES BUT WHICH AT THE
SAME TIME PRESERVES AND PROMOTES THE VITAL INTERESTS OF
ALL. HAVING COME THIS DISTANCE, AND HAVING MADE SO MUCH
PROGRESS ON A FULL RANGE OF LAW OF THE SEA ISSUES, IT
WOULD BE UNFORTUNATE IF THE CONFERENCE SHOULD FALTER ON
ANY OF THE REMAINING UNRESOLVED ISSUES.
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